

THE QUEBEC CONSTITUTIONAL QUESTION.

SPEECH BY THE

RT. HON. SIR JOHN MACDONALD.

[DELIVERED APRIL 11TH, 1878.]

From *The Gazette*, Montreal.

Sir JOHN A. MACDONALD—Mr. Speaker, I rise for the purpose of bringing before the attention of this House the late political events which occurred in the Province of Quebec, and I may as well now read the motion which I propose to place in your hand. I move, sir, seconded by the hon. member for Cumberland,

That Mr. Speaker do not now leave the chair, but that it be resolved that the recent dismissal by the Lieutenant-Governor of Quebec of his Ministers was, under the circumstances, unwise, and subversive of the position accorded to the advisers of the Crown since the concession of the principle of responsible government of the British North American Colonies.

It was suggested the other day that the motion to be made on this subject should be an independent motion, standing on its own merits, and in an amendable form, and my hon. friend from Chateauguay alluded as an example to the course taken with respect to the celebrated resolutions relative to responsible government which were passed in September, 1841. There is this difference between that case and this: those were a series of propositions for the future government of the country. Before that, Canada, which had long been fighting for responsible Government, had not succeeded in obtaining that great boon, and those resolutions contained in fact a measure not certainly in the form of a bill, but still a measure for the future government and administration of this country. This, on the other hand, is an expression of a grievance. It is not a resolution for the purpose of laying down a new rule for amending any rule for the administration of the affairs of this country, but it is a statement from the point of view to which I venture to call the attention of this House, of a grievance, of a breach of the constitutional system which now exists in Canada. It is a well understood principle that the demand for supply and the assertion of grievances go hand in hand. It is the proper mode and the expedient time for asserting grievances, when supply is demanded by the Crown, and if that be so, the grievances must be stated in the language of the party who claims and states it is a grievance. It is no satisfaction of the

right of the party wishing to make his complaint that he should be told by amendments that his grievance is not as alleged, but that it is another kind of grievance, and must be dealt with in another way. Therefore, I have thought it expedient to adopt the constitutional mode of making this motion at this time. This question, as I have already stated, I hope and believe should be approached without any party feeling one way or the other. It is a constitutional question, rising far above and beyond the temporary party struggles of the day. The hon. gentleman opposite are as interested as we are on this side in the good government of the country, in laying down correct principles for its government. I have had something to do, and I am proud of having had something to do with the confederation of these provinces, with the establishment of the present system and the inauguration of the Dominion. The hon. gentleman at the head of the Government is one of those, to their credit be it said, who forgot party feelings and party antecedents, forgot for the time all the old struggles, in a common effort to lift, if it were possible, the scattered provinces from the slough into which they had to some degree fallen, at least the late Province of Canada, and to form one great Dominion under Her Majesty's Crown and Government. The hon. gentleman at the head of the Government, as well as myself, and all the leading men of that day who were concerned in laying the foundation of the Dominion, must desire to see that a fair superstructure shall be raised on that foundation, and that it shall not be undermined, shall not be weakened or destroyed or prejudiced by any mistake so early in our history. It is of the very greatest consequence that we should make no bad precedent. A bad precedent is a dangerous thing, especially when we are in the commencement of our history. A flaw, a disease at the roots of the young trees, is sure to lead to early decay, and therefore it is especially our duty to see that the tree planted by us—to change the metaphor from the building to the tree—shall be sheltered from every possible disease or infirmity which might destroy its value.

A bad precedent is an exceedingly bad thing. If there is a mistake in administration, that can be cured by a change of Government or of policy; if there is bad legislation, that can be cured by repealing or amending the objectionable Acts, but a precedent once established always has its influence. If you take up constitutional authorities you will find precedents quoted from very early times. It is amusing to see how, when any constitutional question arises, gentlemen interested in such subjects follow out the line of precedents, and you will see sometimes quoted precedents in the time of George III., if not earlier, as of equal value and weight with the precedents that have been set in our own day and in our own time.

Hon. Mr. MACKENZIE—That is good Tory doctrine.

Sir JOHN A. MACDONALD—The Tory doctrine is a doctrine which says that there must be a conservation of the Constitution. It is good Tory doctrine to say that the treatment bestowed on the tree should vary with its growing wants and development. A bad precedent being a bad thing. It is of the very greatest consequence on this, the first occasion when a great constitutional question has arisen, that we should deal with it in a manner worthy of it. I had thought, looking at public affairs from my point of view, that at this time, in the nineteenth century, and with all the advantages we have from English precedents and our own system, a question of this kind could not have arisen in Canada again, but it only shows that eternal vigilance is the price of liberty, when, at this time, here, in Canada, after having gained responsible government at the point of the bayonet, the first principles of responsible government should require to be discussed and defended in this House. The resolution I have submitted to the House states that the act of the Lieutenant-Governor of the Province of Quebec "was unwise, and subversive of constitutional government, and unconstitutional in every way." The first question that arises upon that resolution is whether we have any concern with that in this House. I need scarcely discuss the question, I suppose, and I hope, and believe that the Lieutenant-Governors of the different Provinces stand now precisely in the same position with respect to the Governor-General and his Cabinet as the Governor-General stands with respect to the Queen and her Cabinet, and if that be admitted then it must be held that the Parliament of the Dominion of Canada has a supervision of the acts of the Lieutenant-Governors. Before Confederation, as we all know, each of the Provinces had a Lieutenant-Governor. We had a Governor-General of British North America, who had, by his commission, a nominal supervision over the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, but that was a merely nominal supervision. Then those Governors stood

in exactly the same relation to their respective provinces as the Governor-General of British North America did to the old Province of Canada. They reported direct to Her Majesty's Government, or rather to the Colonial Minister, who represented Her Majesty in that respect. It is well known that before confederation all those governors were liable to have their conduct discussed in the British Parliament. Every governor of every colony in the British Empire was liable to have his conduct discussed, to have a motion made for his recall or for his censure, or to censure Her Majesty's Government if they did not recall them. I need scarcely quote the numerous cases which occurred in days of old, but in modern times we all remember the case of Governor Eyre, whose conduct was discussed in the British House of Commons again and again, who was dismissed by Her Majesty's Government in consequence of the action that was taken in the House of Commons. We all know the case of Sir Chas. Darling, who was recalled by Her Majesty's Government, and whose conduct and deportment and mode of government were frequently discussed in the British Parliament. If honorable members would like to have reference to the discussions I will give them. The discussion on Governor Darling's case will be found in the *English Hansard*, volume 191, page 1,964; that on Governor Eyre's case in volume 184, pages 1,069 and 1,763. There was a remarkable case, showing the freedom with which the British Parliament discussed the conduct of Colonial Governors, on a motion made by the late Joseph Hume, against successive Governors of British Guiana, where he attacked most strongly the conduct of the Government, charging them with a breach of honor and of duty in respect to these Governors, who were two rather distinguished men, Sir Henry Light and Governor Bartlett. In this country, within my experience and that of the hon. member for Chateauguay (Mr. Holton), Lord Cathcart announced in a very unusual way, rather as a soldier than as a politician—

Hon. Mr. HOLTON—By your advice.

Sir JOHN—It was long before my time.

Hon. Mr. HOLTON—It was after Lord Metcalfe came, and before Lord Elgin arrived.

Sir JOHN—It was before my time. The first Governor under whom I served was Lord Elgin.

Hon. Mr. HOLTON—It was your party.

Sir JOHN—I never served under Lord Metcalfe or Lord Cathcart. Only a year or two ago we had the case of Pope Hennessy, whose conduct in Barbadoes was discussed. Although he was not recalled, the debate in the House of Commons went so far as to show that in his superabundant zeal, because I believe it was such, he had perhaps outrun discretion, and he was a very short period afterwards removed to another colony. These cases, however, are not required in order to establish the fact that the Imperial Parlia-

ment have dealt with the acts, the merits and demerits of colonial Governors with perfect freedom and perfect right, and the Imperial Government are held responsible, as they were in Governor Eyre's case, when they resisted several of the motions made, to follow up his dismissal by punishment, and censure was endeavored to be cast on them by several resolutions. In fact, it is said by the present Lord Grey, in his book on Representative Government, that in some respects the colonies have an advantage over the mother country. The Sovereign can do no wrong, but if the representative of the Sovereign does wrong, the people of the colony have the right to appeal to the foot of the throne, and hold Imperial Ministers responsible if they do not do justice to the colony. I will quote a short passage. Earl Grey says, at page 346:—

"There was this most important difference between a Colonial Governor and a British Sovereign of the House of Lancaster or of Tudor. The former was responsible to the Imperial authorities, to which the colony could always appeal for protection from a Governor who had abused his power. The Crown will recall any Governor who had failed to discharge his duty, and if he refused to do so on a well-grounded complaint from the inhabitants of the colony, they were entitled to lay their grievances before Parliament."

My contention is, and I do not suppose it will not be dispute, that the same power that rested in the Imperial Parliament with respect to Colonial Governors appointed by direct command of Her Majesty, exists with respect to the Dominion Parliament as far as regards Lieutenant-Governors appointed by commission of the Governor-General. In the remarks which I shall address to the House I assume that the Lieut.-Governor of each province has the same power, represents the Crown to the same degree as the Governor-General represents the Crown with respect to the Dominion Parliament, within the jurisdiction of his own provinces. I do not mean to say, it is not necessary for the purpose of my argument, that that is legally so. A very strong argument has been used lately by a distinguished lawyer in Montreal (Mr. Kerr) upon that point. He has gone to show and to argue that, by law, the Lieut.-Governor being a creature of the statute, a creature of our Constitutional Act, approved by commission from the Governor-General, and not from the Sovereign directly, has not the same power or the same attributes or the same position as the Governor-General. Well, there is much to be said from a merely lawyer's point of view in that respect, and I would not be at all surprised, if a case were brought up before the Courts which would be obliged to set aside the constitutional question and look at the strictly legal question, whether that might not be maintained. We know, with respect to the powers of the Speakers of the different provinces, that that question has been decided twice, if not thrice, perhaps oftener. The different legislatures, the different representatives of the people, the

colonial assembly, have always contended that the Speakers in the different colonies had the same power within their limited colonial jurisdiction as the Speaker of the House of Commons, and that it is absolutely necessary for us that the Speaker should have that power. But we know that it was decided in an action brought against the Speaker of Newfoundland, in the case of Kelly and the Speaker, that the Speaker had no such right; that the right of the Speaker of the House of Commons rested upon prescription; that the Speakers, under the colonial constitution, were creatures of the statute, and that they had no common law, parliamentary rights, as the Speaker of the House of Commons had. Still, all the Colonies said it was absolutely necessary that that power should be given them. It was accorded to us, but as a simple legal question it was decided in that case and in several others. In the case of McNab against Bidwell, when Sir Allan McNab brought an action against the Speaker of the old Province of Upper Canada for false imprisonment, because he had, under order of the House of Assembly, and as Speaker, issued a warrant for his arrest, the question was raised, though I am not sure that in that case it was formally decided. For the purpose of this discussion I will assume that the Lieutenant-Governor held precisely the same position in reference to the Province of Quebec, its Legislature and its Ministry as the Governor-General does in regard to this Legislature, and the Ministry that advises him. In this discussion, as far as I am concerned, I assume that he has the same power and responsibilities, the same right of exercising the prerogative, within the limits prescribed by the Confederation Act, and the same responsibilities, and that he must be subject to the same checks. I have been speaking about the legal right of Speakers and I would now also speak of the legal rights of Lieutenant-Governors, of the Governor and of the Crown. A great deal of confusion arises, as is evident from the arguments we read in the press, from the intermingling of the question of prerogative power and constitutional right. The Crown has great powers, great legal powers, and if they are exercised, every Court must sustain the exercise of that prerogative power, that legal power, because it is a power conferred upon the Crown by law. At the same time, every one of these acts, which are sustained and may be sustained in the Courts as perfectly legal, may be as thoroughly unconstitutional as the Court declared them to be legal. Formerly it was otherwise, but now the distinction is drawn in practice and in theory. All the constitutional writers lay down that principle beyond cavil, and to say that the Crown has the right to dismiss a person or appoint a person, the right to veto an Act of Parliament, the right to make a treaty, that the Crown has an infinity of prerogative

rights, is no answer to any charge which may be brought against the Crown or the advisers of the Crown, that the legal prerogative of the Crown was unconstitutionally exercised. The Sovereign, for instance, can declare war, as we all know. The Sovereign can make treaties without reference to Parliament. The Sovereign could, by a treaty, give away the Isle of Man, or the Channel Islands, or the Duchy of Cornwall, and that treaty would be legal, and the country would be gone; but, at the same time, there is the right of impeachment, and no Minister in his senses would even recommend such an exercise of the royal prerogative. It is very important, Mr. Speaker, that we should keep that difference distinctly and steadily before us. We see it mentioned in some of the newspapers which are usually called Liberal, but in this case are the reverse of liberal, that the Constitutional Act gives the Lieutenant-Governor the power to dismiss his Ministers; that they only hold office during pleasure, and that that pleasure can be exercised whenever the Crown thinks proper so to exercise it. That is not the Constitution, and I will call attention to the difference shortly, because it is well to lay down this principle, and to understand the difference between the legal power and the constitutional exercise of it. Lord Brougham, who is, I must say, however, not, perhaps, the strongest authority on constitutional questions, who was a little erratic, though his general idea, as my hon. friends opposite who have studied these questions must know, was that of a man whose statements should be received with respect, said:—

“In discoursing upon the frame of our Government, I have frequently used the term ‘constitutional,’ notwithstanding the disfavor in which it is held by political reasoners of the Bentham school. They regard it as a gross absurdity, and as curt language of the factions whom they hate. They say that the word has either no meaning at all, or it means everything and anything. A thing is unconstitutional, say they, which anyone for any reason chooses to dislike. With all deference to these reasoners, the word has a perfectly intelligible meaning, and signifies that which it is always most important to regard with due attention. Many things that are not prohibited by the law, may, that cannot be prohibited without also prohibiting things which ought to be permitted, are nevertheless reprehensible because contrary to the spirit of the Constitution. Thus, the Sovereign of England is allowed by law, like any other person, to amass as much money as he pleases by his savings, or by entering into speculations at home or abroad. He might accumulate a treasure of fifty millions as easily as his brother of Holland lately did one of five, and he would thus, besides, have his parliamentary income, and without coming to Parliament for a revenue, have an income of his own equal to two or three millions a year. This would be an operation perfectly lawful and perfectly constitutional, and the Minister who should sanction it would be justly liable to severe censure according to some speak with perfect correctness of a law which is proposed being unconstitutional if it sins against the genius and spirit of our free government; as for example, against the separation of the executive from the legislative and judicial

functions. A bill framed into a statute which should permanently prohibit public meetings without the consent of the Government would be as valid and binding a law as the Great Charter or the Act of Settlement, but a more unconstitutional law could not be well devised. So a law giving the soldiers or the militia the power of choosing their officers, or a law withdrawing the military wholly from the jurisdiction of the courts of law, would be as binding and valid as the Yearly Meeting Act. But it would violate most grievously the whole spirit of our Constitution. In like manner, letting the people choose their Judges, whether of the Courts of Westminster or Justices of the Peace, would be as unconstitutional a law as letting the Crown name the juries in all civil and criminal cases.”

But, sir, I will quote the language of a man of the present day, the mention of whose name will be sufficient to ensure respect for his opinion, one who is extremely liberal in his views, and who, as an historian, has assumed in England the first place. I refer to Mr. Freeman. This passage is so instructive that, at the risk of being tedious, I shall read it, especially as the point I am now discussing is put far more aptly and with greater ability than I can pretend to put it:—

“Since the 17th century things have in this respect greatly altered. The work of legislation, of strictly constitutional legislation, has never ceased. A long succession of legislative enactments stand out as landmarks of political progress, no less in more recent than in earlier times. But, alongside of it, there has been a series of political changes, changes of no less room than these which are recorded in the Statute Book, which have been made without any legislative enactment whatever. A whole code of political maxims, universally acknowledged in theory, universally carried out in practice, has grown up, without leaving among the formal Acts of our Legislature any steps by which it grew. Up to the end of the 17th century we may fairly say that no distinction could be discerned between the constitution and the law. The prerogative of the Crown, the privilege of Parliament, the liberty of the subject might not always be clearly defined on every point. It has, indeed, been said that those three things were all of them things to which, in their own nature, no limit could be set. But all three were supposed to rest, if not on the direct words of the statute law, yet at least on that somewhat shadowy yet very practical creation, that mixture of genuine and least traditions and of recent devices of lawyers which is known to Englishmen as common law. Any breach, either of the rights of the Sovereign or of the rights of the subject, was a legal offence, capable of legal definition, and subjecting the offender to legal penalties. An act which could not be brought within the letter either of the statute or of the common law would not then have been looked upon as an offence at all. If Lower Courts were too weak to do justice, the High Court of Parliament stood ready to do justice, even against the mightiest offenders. It was armed with weapons fearful and rarely used, but none the less regular and legal. It could smite by impeachment, by attainder, by the exercise of the greatest power of all—the deposition of the reigning King. But men had not yet reached the more subtle doctrine that there may be offences against the Constitution which are no offences against the law; they had not learned that men in high office may have a responsibility, practically felt and acted on, but which no legal enactment has defined, and which no legal tribunal will enforce; it had not been found out that Parliament itself has a power, now practically the highest of its powers, in which it acts neither as a Legislature nor as a Court

of Justice, but in which it pronounces sentences which have none the less practical force because they carry with them none of the legal consequences of death, bonds, banishment or confiscation. We now have a whole system of political morality, a whole code of precepts for the guidance of public men, which will not be found in any page of either the statute or the common law, but which are, in practice, held barely less sacred than any principle embodied in the Great Charter or in the Petition of Right. In short, by the side of our written law, there has grown up an unwritten or conventional constitution. When an Englishman speaks of the conduct of a public man being constitutional or unconstitutional, he means something wholly different from what he means by conduct being legal or illegal. A famous vote of the House of Commons, passed on the motion of a great statesman, once declared that the then Ministers of the Crown did not possess the confidence of the House of Commons, and that their continuance in office was therefore at variance with the spirit of the Constitution. The truth of such a position, according to the traditional principles on which public men have acted for some generations, cannot be disputed, but it would be in vain to seek for any trace of such doctrines in any page of our written law. The proposer of that motion did not mean to charge the existing Ministry with any illegal act, with any act which could be made the subject either of a prosecution in a Lower Court or of impeachment in the High Court or of Parliament itself. He did not mean that the Ministers of the Crown committed any breach of the law of which the law could take cognizance by retaining possession of their offices till such time as the Crown should think good to dismiss them from these offices: what he meant was that the general course of their policy was one which, to a majority of the House of Commons, did not seem to be wise or beneficial to the nation, and that therefore, according to a conventional code as well understood and as effectual as the written law itself, they were bound to resign offices of which the House of Commons no longer held them to be worthy. The House made no claim to dismiss those Ministers from their offices by any act of its own; it did not even petition the Crown to remove them from their offices: it simply spoke its mind on their general conduct, and it was held that when the House had so spoken, it was their duty to give way without any formal petition, without any formal command on the part of either the House or of the Sovereign. The passing by the House of Commons of such a resolution as this may perhaps be set down as the formal declaration of a constitutional principle, but though a formal declaration, it was not a legal declaration; it created a point for the practical guidance of future Ministers and future Parliaments, but it neither changed the law nor declared it. It asserted a principle which might be appealed to in future debates in the House of Commons, but it asserted no principle which could be taken any notice of by a Judge in any Court of law. It states, therefore, on a wholly different ground from those enactments which, whether they changed the law or simply declared the law, had a legal force, capable of being enforced by a legal tribunal. If any officer of the Crown should levy a tax without the authority of Parliament, if he should enforce martial law without the authority of Parliament, he would be guilty of a legal crime, but if he merely continues to hold an office conferred by the Crown, and from which the Crown has not removed him, though he hold it in the teeth of any number of votes of censure passed by both Houses of Parliament, he is in no way a breaker of the written law, but the man who would so act would be universally held to have trampled under foot one of the most undoubted principles of the unwritten but universally accepted constitution."

Now, sir, what is the case of the Lieutenant-Governor, and what were his relations to his advisers, constitutionally setting aside the legal question altogether which I have attempted to discuss? Setting aside his legal right to dismiss every officer holding office under him during pleasure, what is the position of the Lieutenant-Governor and his advisers? They hold precisely the same position, as I contend, with respect to the Lieut.-Governor as Lord Baconfield and his Government hold with respect to Her Majesty, and the hon. member for Lambton and his Ministry hold with respect to the representative of the Sovereign, the Governor-General. Under the constitution as it now stands, I contend that the Ministry of the day, so long as they have the confidence of Parliament, so long as they are sustained in Parliament, must and will have the right to claim the confidence of the Sovereign or the representative of the Sovereign. I contend that, although it was otherwise formerly, and although the doctrine has grown up by slow degrees, and although we read of dismissals of Ministries by the Crown in the earlier days, when the constitution of England was still undeveloped to the state of perfection in which I think it exists at this moment yet, in this day, so long as the advisers of the Crown have the confidence of Parliament, they have a right to claim the confidence of the Sovereign. That is the great principle. If we do not hold to that, then we are all at sea, and in great danger of being wrecked; then, indeed, our institutions are not only on their trial, but we have great reason to dread that they will fail, and that this promising commencement of our new Dominion will, by an abandonment of that great landmark, fail to carry out its future as a Dominion, founded on British constitutional principles, and carrying them out under more favorable terms and under less fettered conditions than even our fellow-countrymen in Great Britain and Ireland. As I have said before, this is a question which appeals to all of us, to every man, to every lover of his country, every lover of free institutions, everyone who wishes to embalm, as it were, British institutions in this great off-shoot of the British monarchy. It is so necessary that we should consider this question as it exists now in England, and not according to old precedents, that I will take the liberty, before I sit down, of calling the attention of the House to the gradual growth, the very gradual growth in the face of such immense discouragements and immense pressure from the Crown, and occasionally from immense weaknesses on the part of the advisers of the Crown, that it is only by slow degrees that we have evolved the now present system that exists in England, and which, I hope, by the vote of this House, and by the advice of this House, and by the general concurrence of this House, will be carried out in this country. When I speak about the failure of Ministers in Eng

land, we know that we have failed, and that the desire of continuing in office has again and again made them make unworthy compliances to the Sovereign, but notwithstanding the obstinacy, the wrong-headedness, if I may use the expression, from the Queen or King wearing the Crown at the time, and the unworthy compliances and weaknesses of the advisers of the Crown, yet, by slow degrees, the constitution has been evolved, until we now have that principle fixed in England, and I hope that the action of this House will fix it in Canada, and that, so long as the Ministry of the day have the confidence of the people, they will have the confidence of the Crown, will be advised by those men who will have the confidence of the Crown, and that the Crown will be advised by those men who have the confidence of the representatives of the people. There is only one case, sir, in which it seems to me that this doctrine can be impugned, and that is when the Sovereign has a reason to believe that the representatives of the people, who, I maintain, should support the advisers of the Crown, have forfeited the confidence of the people themselves. In such a case, Mr. Speaker, if the Crown has that opinion, the Crown has a fair right to say to its advisers:—"Though I admit that you have the confidence of the representatives of the people, though I admit that you are sustained in Parliament, yet my idea is this: that those who do so sustain you have from one cause or another forfeited the confidence of the people themselves, and I desire that there shall be an appeal under your guidance. I hold you, my advisers, to have the confidence of the people until the contrary is shown, but I call upon you, and I insist upon it, that there be an appeal to the people, and if you come back from the people sustained in the future, as Parliament has sustained you in the present Parliament, then you will have again the confidence which has been to some degree weakened by late events." For instance, Mr. Gladstone himself did not wait for any such intimation from the Crown; he did not wait to be told that there was unmistakable evidence that a reaction had set in in England; he did not wait to have the Crown send for him and say to him:—"You see single after single election going against you; you see that there is a very strong reaction in the country, and I think that you ought to appeal to the country as a whole; I think that you ought to see whether the country has such confidence still in you that you have a title to the renewal of your lease of office." No; Mr. Gladstone felt that it was due to himself and his position to go to the country; he believed, and it may or may not have been so, that these elections which had gone against him were indications that he had, to a certain extent, lost the confidence of the people, and of his own accord advised the Sovereign to dissolve, so that there might be an appeal to the people. In the first place, I would call your attention shortly to the act

of the Lieutenant-Governor in the Province of Quebec. He had found his Ministers in when he came into power, and found them sustained by the representatives of the people in the House of Assembly. He found them in the Upper House, which was a judicial House, nominated by the Crown, and they were there also strong.

Hon. members—Hear, hear.

Sir JOHN—It is so; I state so as a matter of fact. As a matter of fact, the Lieutenant-Governor found them in office. They had then the confidence of the representatives of the people, and they had the support—if that suits better—

Hon. Mr. BLAKE—To the term a "judicial House" we were objecting, because every man in it was nominated by themselves.

Sir JOHN—Every man on the Bench is nominated the adviser of the Crown, and yet they are not judicial officers. (Hear, hear.)

Hon. Mr. CARTWRIGHT—They have judicial functions.

Sir JOHN—I know, Mr. Speaker, that it is the fashion in some places and in some ways to attack the Senate or the Legislative Council, as nominated bodies; that is a point by itself which perhaps we had better not import into this discussion even by a cheer. When I say "judicial," I mean to say that their functions are supposed to be somewhat analogous to those of the House of Lords. The House of Lords is supposed to have judicial functions; that is to say, they are not to resist the well ascertained will of the people, and that they are to sit judicially upon the measures of the representatives of the people, the House of Commons, so that they may give the people themselves the opportunity, if they think right. In considering that question, the question they are dealing with, they are a check on the House of Commons, the representatives of the people, and in this respect they hold an advisory and *quasi* judicial position, that is all I mean in that respect. But the Lt.-Governor found a Ministry, having the confidence of both branches of the local Legislature, in office, and they were very strong, I believe, in the House of Assembly, but I do not know what the proportions were in the Legislative Council—I believe that they were two to one.

Mr. DEVLIN—More than that.

Sir JOHN—Two to one in the Lower House; they had a majority of 20 in 65. The Lieutenant-Governor had their assurance that his advisers had the confidence of the representatives of the people, and of the other branch of the Legislature, which wisely or unwisely was a constituted authority in this case. The whole, or nearly the whole of the session, dragged on, the Ministry of the day introduced their several measures; they carried them almost to completion; they brought down, for instance, a system of taxation, which is not a very popular thing for any Government to do, as perhaps every Finance Minister in his lifetime has found

out; this was allowed to go on until it had almost come to completion; the principal measures of the Government were about to become law in a day or two, and all these measures had been supported by strong votes in both Houses. They had been supported, and there was a vote of want of confidence against them on one of these measures, but it was out-voted by a numerous majority, considering the small body of which that House is constituted, and yet at the last moment, just before the prorogation, when they had the proof that both Houses had determined on this, and the proof that the representatives of the people—and until there is an appeal to the people it is to be held that they had the confidence of the people—approved of it; then the Lieut.-Governor took the opportunity to dismiss these men on the ground that these measures were unconstitutional. Not one of these grounds was sufficient, not one of these grounds can hold water for a moment. I am quite satisfied that if the illustrious personage of whom we spoke to-day had been in the position of the Lieut.-Governor of the Province of Quebec, he would rather have cut off his right hand than permit what he would consider an outrage on the British constitution. I said that by slow degrees England was educated up to the present position of constitutional law. The constitution is developing every moment. Here, as Bristow says, the constitution is not now what it was in 1860. The constitution is not certainly now what it was in 1838, at the time of the Bed-chamber plot. The constitution of England at this moment is being developed to a perfect system, and what we contend is the right of the people of the Dominion and the right of every province of the Dominion, is that we have a right to claim that we have precisely, in our several legislatures and in respect to the several legislatures and this Parliament, the same right as the English people have with respect to their Parliament. Now, sir, look at the case of dismissals even in the time of George the Third, and he, as we all know, said, if we draw our authority from the Liberal writers—and the Liberal writers of that day are the Liberal-Conservatives of to-day—

Hon Mr. HOLTON—Do not slander them.

Sir JOHN—Edmund Burke made his appeal from the new Whigs to the old Whigs, and he would be in this country what we call a Baldwin Reformer, or, in other words, a Liberal-Conservative. Now, sir, in 1774, it has been laid down by all the writers that the present British constitution only commenced to get fair play, and that the Rockingham Government was established over the ruins of George the Third's old Government, Lord Bute and the rest of them, by the influence and by the genius and by the efforts and by the writings of Edmund Burke. In 1774, Mr. Fox, or rather the Duke of Portland, who formed the

famous Coalition Government, was dismissed by George the Third. Well, sir, even then, although it is admitted by all writers, as well by those who may be considered to be writing on the Conservative side, or the Tory side, if you like, as by all Liberal writers, that, looking at the transactions of that day by the light of the present constitution as at present administered, George the Third was wrong, and that George the Third, if he did now what he did then, would be considered to have committed a great breach of the constitution. What was that case? It is quoted, and it is one of the examples of how far a bad precedent reaches, and how it may, to the latest instant, be quoted, when it should be looked upon as a rock to be avoided rather than as a precedent to be followed. The Indian bill was introduced into the House of Commons; it was carried in the House of Commons, and it was defeated in the House of Lords. George the Third was known to be opposed to that measure; George the Third knew that it was taking away all the Crown patronage which he was eagerly holding in his tenuous grasp; it was known that it transferred the patronage of the Crown to the Ministry of the Crown of the day. Although he was aware of that, and he felt too, in his heart's core, that this was a blow at what he considered the monarchical principle and the monarchical power, yet he allowed it to pass through the House of Commons, although he was opposed to it, and the Ministry knew that he was opposed to it; although they knew that every feeling and every principle and every emotion of George the Third was opposed to that measure, yet he allowed his Ministers to introduce that bill. It was carried through the House of Commons. It came to the House of Lords, and only when it was defeated by the other branch of the Legislature, and thrown out, did he say "You have lost the confidence of one branch of the Legislature;" and mind you, Mr. Speaker, that then the House of Lords was of as much consequence, if not of more consequence, than the House of Commons. If this was long before the Reform bill, it was a time when the House of Lords had not only its own power and position and prestige, as a great branch of the Legislature, but it was a time when it controlled more than one-third, aye, and approaching to nearly one-half of the House of Commons, so that a great peer in the House of Lords was an infinitely greater political man than a political man in the House of Commons, and it was more necessary at that time, if possible, and certainly as necessary to have the confidence of the House of Lords as it was to have the confidence of the House of Commons, and it was not until there was a vote of want of confidence, by throwing out this measure, on which the Administration had staked their whole existence, that he ventured to dismiss them. And yet, notwithstanding that case, it is now held by all constitutional writers, held by all statesmen,

and held by every man who has carried the constitutional principle into action, that the conduct of George the Third cannot be defended as being constitutional.

Hon. Mr. BLAKE—He brought about the vote.

Sir JOHN—That is only another instance of the King interfering improperly. I am not defending George the Third, who certainly brought about the vote.

Hon. Mr. BLAKE—I am simply pointing out that this was an ingredient in his conduct.

Sir JOHN—Still, George the Third certainly had no right to write that letter to Lord Temple. Certainly this act would not be borne with for a moment now. Although we had, under a great State exigency, under the danger of there being a great revolution in England, William the Fourth doing very nearly the same thing with respect to the Reform bill, it is admitted that this was a breach of the Constitution, but it was like the suspension of the *Habeas Corpus* Act in time of war or insurrection. In 1801 Mr. Pitt was not dismissed, but he resigned because the King insisted upon his abandoning his project for Catholic emancipation. It was a resignation. It was a dismissal in terms, but it was approaching very much to a forced resignation. He resigned on the Catholic question. The next dismissal was that of Lord Grenville 1817. It took place on one form of the Catholic question, namely, in regard to allowing officers professing the Catholic religion to hold high rank in the Army. The King at first consented, but afterwards stated that a misapprehension had occurred as to the extent of his assent, and therefore requested the Ministry to withdraw the bill. That the Government consented to do, but the King required still further a pledge from them in writing that they would never introduce a similar measure. They at once said it would be unconstitutional, and derogatory to their position, and they were dismissed. There were two cases in the time of George the Third, that of Lord Grenville and of the Portland Administration, the coalition Administration of Fox and Portland. During the whole reign of George the Fourth there was no dismissal; although he was opposed to Catholic emancipation, although he had an hysterical abhorrence to that measure, yet he finally yielded to his Ministers. There was no dismissal by George the Fourth. There was one dismissal by William the Fourth in 1834, and that we have all seen quoted as a precedent for the dismissal in Quebec in 1878. Now, in the first place, there was a great excuse, which was not so well known at the time as it is now, for the conduct of William the Fourth in dismissing the Government of Lord Melbourne, in consequence of the death of Lord Spencer and the elevation of Lord Althorpe, who led the Lower House, to the House of Peers. That you will find described in Greville's Memoirs, and in order to show there was an

excuse for William the Fourth in that case, which does not exist now, I will quote shortly the statement the King made, which is given by Greville, and which has been confirmed in the Memoirs of Baron Stockmar:—

"When Lord Melbourne went down to Windsor to see the King, on the death of Lord Althorpe, the following is stated to have occurred:—Lord Melbourne told him, that is, the King, that he had only undertaken to carry on the Government in consideration of having the assistance of Althorpe in the House of Commons; his removal made it necessary to adopt a new organization altogether, that some considerable concessions to the principle of reform were judged to be necessary, and the appointment of a successor to Althorpe, who should carry them into effect; that he was of opinion that without these the Government could not go on, and at the same time it was necessary to state that there were members of the Cabinet who did not coincide with these views, and who would retire when Parliament met, if they were adopted. These were Lord Lansdowne and Spring Rice. Lord John Russell was to lead in the House of Commons, but the loss of Rice would be a severe blow to them. The concession related principally to Church reform. The dissolution of the Cabinet being thus exhibited, it was clear the Government could not go on without some material alteration in its composition. The King urged this, and asked Melbourne from what quarter the necessary accession of strength was to be procured, and whether he could hope for it from the Conservative interest. He owned that nothing was to be expected from that quarter. It remained, then, that it was only from the more extreme party that their ranks could be recruited. To this the King would not consent, and he therefore imparted to him his resolution of placing the Government in other hands."

In a note made by Mr. Reeve, who was Clerk of the Privy Council at that time, and who edited Grenville's Memoirs, it was stated that this account of the transaction was confirmed in almost every particular by the statement drawn up by King William himself, or by his directions, for the information of Sir Robert Peel, and first published in Baron Stockmar's Memoirs in 1872; that when Lord Melbourne formed his Government, he told the King that it could not continue unless Lord Althorpe remained in the House of Commons, and unless it became a more Radical and less old Whig Government; that Lord Lansdowne and Spring Rice, who were known as the leading Whigs of that day, were going to retire, because they would not go with the more extreme party, and that unless the Government was reorganized, he could not carry on the Government. Such was the excuse given by the King, and it bore considerable force; yet, by the entire consensus of practical statesmen and theoretical writers, it had been admitted that William the Fourth was wrong. Let it be remembered, moreover, that there is this marked distinction between that case and that in Quebec: at the time when Lord Melbourne told the King he could not go on without a radical change in his administration, and in fact have it recast, he was in a minority in the House of Lords, whereas, in Quebec, a vote of confidence in the Government was adopted both by the Commons and the Upper House.

It being 6 o'clock the Speaker left the chair.

AFTER RECESS.

Sir JOHN A. MACDONALD.—At the time when the House took recess I was speaking of the last instance in the history of England, when the power of dismissal of Ministers by the Crown was exercised. Such a case has not occurred since then. It was unsuccessful then, as it deserved to be. It received the repudiation of Parliament and of the people by the triumphant return of Lord Melbourne and his supporters at the general election, which was forced on unconstitutionally. It has been pointed to with scorn by all writers on the subject ever since, and it is therefore an important landmark in the history of constitutional law in England, of an act which can never happen again in the Mother Country, and I would fain have hoped, if it had not been for recent occurrences in Quebec, it would never have happened in any country having English institutions. I shall have to quote several authorities with respect to this last outrage and offence against responsible government in England and against the British Constitution. Since recess I have opened the second volume of the *Memoirs of Lord Melbourne*, written by Mr. McCullagh Torrens, an old Parliamentarian, and a man of high standing in Parliament, than whom no one was more competent to deal with the subject. The writer, who treats the *Memoir* as a narrative, took the ground that if a change of Government were to be made, it should be carried out in a constitutional manner:—

"Lord Melbourne felt it to be his duty to remind his Sovereign that the Ministry had a large majority in Parliament on a question of importance. The King replied that they were in a minority in the Peers, and he had reason to believe they would speedily be in the same condition in the Commons, and he added peremptorily they had better, therefore, resign without loss of self respect. William the Fourth was quite right, according to the principles of the constitution. If Lord Melbourne thought his Administration had not the confidence of the people, they had the right to appeal to the country if they desired to do so, and it was when he had declined to do so, and no before, that the King should have dismissed him, and brought in another Administration, to try the experiment whether the people supported the new or the old Administration."

The writer further said:—

"It appears as though his majesty's change of majesty to His Honor "had been made into the unconstitutional course of taking counsel from others without the knowledge of his legitimate advisers, and he was about to follow some secret or irresponsible counsel in opposition to their advice. Lord Althorpe, who was of such importance in the King's opinion as to warrant his removal from the leadership of the House of Commons to the House of Lords, as Earl Spencer, on the death of his father, might be supposed to feel flattered by the declaration of his Sovereign: that his withdrawal from the House of Commons was sufficient to break an administration. He had made up his mind never more to enter politics, and he never did so. But what did Lord Althorpe say? He remained for some weeks at Althorpe, in se-

clusion, and finally made up his mind to take no further part in public affairs. But in the calm of his retirement he was peculiarly qualified to weigh the motives which had led to the dismissal of his late colleagues, and the consequences of that dismissal, and his judgment was unwavering and stern. He suggested to Mr. Hume, with whom he had never any confidence, and very intermittent public agreement, that an early opportunity should be taken to ascertain what the opinion of the new House of Commons was upon the mode in which Lord Melbourne had been dismissed. In his view the conduct of William the Fourth was not only reprehensible but far too dangerous as an example to be suffered to pass unrepheated by Parliament."

That would be found in a letter dated January 31st, 1835, from Lord Althorpe. It is said that in this age the people do not know the history of their time. In looking at the imperfect histories written of recent days, you find little allusion to the philosophic and constitutional reasons affecting the course of the administration of the nation. I will quote from a well known History of England, written by Charles Knight, who, as everyone knows, is a great literary man and great politician, and a great Liberal. The sentences are few, but the words are pregnant with meaning. The author wrote:—

"The sensation produced in London by the reported dismissal of the Ministry was a natural consequence of the suddenness of the act as it presented itself to the body of the people, in its really unconstitutional character, as it appeared to the thoughtful and well-informed men. The sovereign has a constitutional right to dismiss Ministers, but it must be on grounds more capable of justification to Parliament than the simple exercise of his personal will. The suddenness of the resolve rendered an arrangement necessary which could not be justified by any precedent, except on one occasion of critical emergency in the last days of Queen Anne. That was when it became a question whether a pretender (a Stuart) should be raised to the throne, or that the Hanoverian succession should be maintained."

Let me quote from a periodical then of considerable more weight than it has now, viz., the *Edinburgh Review*, on this subject, and I think the House will agree with me that the sentences are pregnant and the language forcible. The *Edinburgh Review* said:

"The power of the Crown to choose its Ministers is clearly a necessary attribute of the monarchy, but is it now exercised under adequate checks? Some intriguing courtier, some clamorous friend who has access to the royal ear, some politician who has a purpose to serve, and cares little if a new Ministry lasts no longer than his own gratification requires, may abuse the royal confidence, and blindly bring on an experiment all but desperate for both king and country, of changing the Ministry. By the strict letter of the law, the Minister who accepts office is responsible for the change which removed his predecessors. But suppose one Ministry displaced, and that no one agrees to take his place; suppose this suspension of ministerial functions continue for weeks, who is answerable for that? Indeed, if the King has once dismissed his Ministers or he is left without a Government, hardly any practical responsibility could ever be incurred by the men who only entered into places made vacant long before they were consulted."

The language used in this article is so strong that I do not care to read it all, lest it should

be supposed that I did it for party purposes, or with the intention of applying it expressly to the circumstances in Quebec:—

"If anyone thinks that the view here taken of the late change of Ministry is too strong, let them reflect on the wholly unprecedented circumstances which distinguished that strange event. Between His Majesty and his confidential servants there existed no difference of opinion upon any subject of policy, foreign or domestic. This is now explicitly admitted by the Tories themselves. Among the Ministers reigned the most perfect harmony on all questions, and personally the members of no Cabinet ever were on more cordial terms one with another. This, too, is admitted, and the King's speech describes their whole policy as perfectly unexceptional and uniformly successful. Lord Iturbide became a Peer, Parliament was not sitting, and therefore, and for no other reason whatever, as is now allowed by all, the King changed his government, called to his councils the most opposite class of statesmen he could find, gave his confidence to the men whom the court most distrusted and disliked, and would not even wait a few days before he cleared out his House. That he had been wishing to change the Ministry for some time is very possible, but when his royal father, said to be one of the ablest professional men of his day, wanted to make such changes, he always waited his opportunity and seized on some measure or on some pretext, in some moment when there was a cry against his servants, to deliver them over into the people's hands, and appoint more popular successors, men whom he liked, not certain y because of their popularity, but in spite of it. It was this that, when Mr. Fox died, His Majesty waited till a 'No Popery' cry could be raised, and only turned out the Whigs six months after they had lost their mighty chief. The secret advisers of the present King have done much certainly to dispirit and to alienate by their late proceedings, but nothing to show that they are gifted with his royal parent's kingcraft. They seem to think that a king should turn off his Ministers much as a gentleman does his livery servants."

That is the opinion of the *Edinburgh Review*. I have said that no dismissal has taken place since that time. George the Third dismissed his Ministers in two instances; William the Fourth in one instance; George the Fourth, with all his faults, never thought of such a thing. He fainted on one occasion; he wept, he deplored his sad fate in being obliged to submit to his Administration on the Catholic question, but he yielded; and Queen Victoria has in no case committed such an outrage on the constitution as to dismiss a Ministry which had the confidence of the representatives of the people. The nearest approach to that in the Queen's history is called the Bedchamber Plot. In 1838, not two years after she ascended the throne, on the resignation of the Whig Administration, Sir Robert Peel was sent for, and he insisted that the Ladies of the Bedchamber, who were the wives of the defeated Ministers, should also retire. He did not interfere with the Maids of Honor and others, but he said it was unseemly that the great ladies of the Court should be the wives of the members of the defeated Administration; that the wife of the defeated Prime Minister, for instance, should be at the ear of the Queen, conveying her husband's sentiments and the opinions of the Opposition. The Queen, then a young wo-

man, naturally clung to the friends of her youth, and she declined to have them removed. Sir Robert Peel declined to form an Administration unless they were removed. There was at the time great sympathy with the Queen; I remember it quite well. I remember how it rang through the press in England about the attempt to force upon Her Majesty, this young lady, strange women, instead of those she respected and esteemed and had been brought up with. But in 1842, when the Queen had become a little more acquainted with kingcraft, and knew her position, and when Sir Robert Peel was called in again, she admitted that she was wrong, and allowed the Ladies of the Bedchamber to be removed, and in the Life of the Prince Consort, in the previous book, you will find some leaves written by the Queen, where she gracefully and frankly acknowledges that she made a mistake. This is the only instance that has a remote resemblance to this case. It was the cause of the refusal to take office of Sir Robert Peel, because the Queen insisted on her personal predilections in opposition to the principle that even the *entourage* of the Sovereign should be selected under the advice of the responsible Ministers of the day. The only case that at all appears to give a justification for the course taken in Quebec is that which happened the other day in South Africa: the action of Sir Bartle Frere, who dismissed a Ministry and sent for a new one. This is defended—faintly defended, perhaps, and if it proves to be on true ground, it will be upheld. The result will show whether he will be upheld or not. But his justification is *salus populi suprema lex*. It was a case where all constitutional practices must be set aside in the presence of a great danger. There were a few white men in the South African Colonies; there were 200,000 Zulus threatening them on one flank, and the great body of the aborigines threatening the whole frontier, and Sir Bartle Frere said: "I must take this course, or I may have upon my conscience the blood of every white man in South Africa." We know how fractious the Molteno Government has always shown itself. That Government declined to give the control of the militia force in South Africa to the commander-in-chief. England had her military forces there, and was responsible for the safety of these great and growing colonies. England said:—"If we are to fight your battles, we must have the control of your martial force. We cannot have a divided command; we cannot have our Sir O'Grady half controlled by Colonel Pownall, your Adjutant-General, we cannot have two separate and independent forces acting under different commanders, and without a common responsibility." This was defended, I think, in the *Saturday Review*, and certainly in the *Pall Mall Gazette*, upon the same ground on which the *Habeas Corpus* Act and the Charter of British Liberty might be suspended in the presence

of threatened rebellion or certain war. On that ground, and on that ground only, is it defended, and on these only is it defensible. There can be no application of that case to the present, where there is no war or expectation of war; where there is no fear of external attack or internal commotion. Peace, thank God, dwells in our borders, and we can carry out the British system in its entirety without any such infringement as we have seen on this occasion. Look at the different course of Sir George Bowen, where the circumstances were more than suspicious, when the apparent action of the Government, so far as we can understand it, was such as to propose to disarrange the whole machinery of the Government. The Judges, the officials were all paid off, and the threat was made that unless the Upper House yielded to the Lower, and passed a bill to pay the latter their wages as members, the lunatic asylums, prisons and penitentiaries should be opened, and all the idiocy and madness and crime should be poured out upon the colony, and yet the British Government sustained Sir George Bowen in saying "I must sustain my Administration, who have the confidence of the people. Unless Imperial interests are threatened, it is not for me to judge. I must take my advice from my Administration." And the Liberal press in England sustains him in that. No more able article has been written than that in the London *Daily News* on this subject, showing that if the colonies were to be really a *fac-simile* of the British constitution, it must be carried out to its utmost extremity short of war or bloodshed, and the natural consequence had proved to be that a compromise, from the necessity of the case, had arisen between the two houses, simply because Sir George Bowen, though the course of his Ministers was opposed by every newspaper in England, supported them because they had a majority in Parliament. I said a little while ago that we must judge of the British constitution as it is now, as it has been developed, and not as it was 50 years ago, 75 years or 30 years ago.

Sir JOHN MACDONALD—I shall call the attention of the House to what I believe to be the true principles of the British constitution on the point which I am pressing upon consideration of the House at this moment in 1878. I shall first quote an author who has been quoted again and again; Mr. Bagehot, whose lamented decease struck England with sorrow; especially all political constitutionalists, for he was considered the authority of the day on constitutional law. If I am permitted in this argument to relate a little anecdote, I would do so with reference to this gentleman. This book from which I quote was, in the first place, published in the *Fortnightly Review*. I had read some of the numbers before I went to England in 1865, and I was dining with the Political Economy

Club of London, of which the hon. the premier is a member, when in the course of a conversation on politico-economical matters with a gentleman who sat near me I said "I have been very much struck with some articles in the *Fortnightly Review* on the English constitution. It seems to me that they give the only true picture of the British constitution as it now exists. They are written by one Mr. Bagehot." He said, "I am very glad you like them, because I am Bagehot." From that time an acquaintance grew up between us, which only ceased with his lamented death. Let me now read from him:—

"The principle shows that the power of dismissing a Government with which Parliament is satisfied, and of dissolving that Parliament upon an appeal to the people, is not a power which a common hereditary monarch will, in the long run, be able beneficially to exercise. Accordingly this power has almost, if not quite, dropped out of the reality of our constitution. Nothing, perhaps, would more surprise the English people than if the Queen, by a *coup d'état*, and on a sudden, destroyed a Ministry firm in their allegiance and secure of a majority in Parliament. That power indisputably in theory belongs to her, but it has passed so far away from the minds of men that it would terrify them if she used it, like a volcanic eruption from Primrose Hill. The last analogy to it is not one to be coveted as a precedent. In 1835 William IV. dismissed an administration which though disorganized by the loss of its leader in the Commons, was an existing Government, had a Premier in the Lords ready to go on, and a leader in the Commons willing to begin. The King fancied that public opinion was leaving the Whigs and going over to the Tories, and he thought he should accelerate the transition by ejecting the former. But the event showed that he misjudged. His perception indeed was right: the English people were wavering in their allegiance to the Whigs, who had no leader that touched the popular heart, none in whom liberalism could personify itself and become a passion, who, besides, were a body long used to opposition, and the fore making blunders in office, who were borne to power by popular impulse, which they only half comprehended, and perhaps less than half shared. But the King's policy was wrong: he impeded the reaction instead of aiding it; he forced on a premature Tory Government, which was as unsuccessful as all wise people perceived that it must be. The popular distaste to the Whigs was as yet but incipient, inefficient, and the intervention of the Crown was advantage to them, because it looked inconsistent with the liberties of the people, and in so far as William IV. was right in detecting an incipient change of opinion, he did but detect an erroneous change. What was desirable was the prolongation of liberal rule. The commencing dissatisfaction did but relate to the personal demerits of the Whig leaders and other temporary adjuncts of free principles, and not to those principles intrinsically, so that the last precedent for a royal onslaught on a Ministry ended thus: In opposing the right principles, in aiding the wrong principles, in hurting the party it was meant to help. After such a warning, it is likely that our monarchs will pursue the policy which a long course of quiet precedent at present directs. They will leave a Ministry trusted by Parliament to the judgment of Parliament."

And so he winds up the whole of his discussion on this subject by this pregnant phrase:—

"The Queen can hardly now refuse a defeated Minister the chance of a dissolution."

any more than she can dissolve in the time of an undefeated one, and without his consent." This quotation has been already used in a speech made by Mr. Chapleau, who had made a long quotation from Bagehot, which I did not recognize and which I did not find. I thought that I knew this work by heart. It has been my guide as regards the principles of the British Constitution. I searched the different editions, but I could not find it. I telegraphed to Mr. Chapleau to find out where he got that quotation, and he gave me the reference. It is a rather singular thing that it has never yet, until it was translated by Mr. Chapleau, or for Mr. Chapleau in his speech, appeared in English. Bagehot's book at once took public attention, and a French edition was published of it. It was published in 1872, I think, immediately after a book on the British Constitution was written by the late M. Prevost Paradol, and in the French introduction to his book, which otherwise is a translation of this, he discusses some of the points taken by M. Paradol in his book on the British Constitution. I have the original edition here in French, but as I shall trouble you with my imperfect French, I will read you Mr. Chapleau's translation of it, which I have verified as being a correct translation. I have already read you the first passage he quotes, and I shall read it, on account of its importance, again :

"The Queen can hardly now refuse a defeated Minister the chance of dissolution, any more than she can dissolve in the time of an undefeated one, and without his consent." (This is the quotation which only appeared in French, but I shall read you the translation.) "And no monarch should dissolve Parliament against the will and the interest of the Ministry which is in power. No doubt the King can dismiss such a Ministry and replace it by another Administration, whose advice to dissolve Parliament he should take, but even with this precaution, to act thus towards a Ministry which had a strong majority in Parliament, would be to strike a blow which it is almost impossible to suppose. We do not believe that Queen Victoria herself, in spite of the popularity and respect by which she is surrounded to, a greater extent perhaps than any of her predecessors, would ever have recourse to such a measure. What would be thought if she should venture to reason thus? (Apply the reason to Quebec, and you will at once see the pregnancy of this passage.)—The Whigs are in a majority in the existing Parliament, but I think the country would favor a Tory Administration; let us therefore dissolve Parliament, and see whether the country will not elect a Parliament of opposite opinions to those which prevail in the present Parliament? What would be thought of this? No Englishman can dream even of a catastrophe of this nature, but to them it appears to belong to the phenomena of a world altogether different from that which he inhabits. In practice in England the Sovereign considers himself obliged to follow the advice of the Ministry which the House of Commons desires to maintain in power. All prerogatives at variance with this principle have fallen into disuse, but the Sovereign may accord to the Ministry the opportunity of securing, by an appeal to the people, a majority which is denied it in the House of Commons, but to strike from behind, so to speak, and strangle by means of an appeal to the country a Ministry sustained by Parliament, would be an even, which no

longer enters into the calculation, although in former times instances of this occurred in our annals."

No stronger passage could be written, and it could be written by no stronger authority than by Mr. Bagehot. I read you, sir, a long passage as to the difference between the legal prerogative and the constitutional exercise of it, from Freeman, in his "Growth of the English Constitution," which has just come out, as you know, and I shall only read you one short sentence, which shows that he agrees in every respect with the language of Mr. Bagehot:—

"The written law leaves to the Crown the choice of all ministers and agents, great and small. Every appointment to office and dismissal from office, as long as they have committed no crime which the law can punish, is a matter left to the personal discretion of the Sovereign, but the unwritten law, or the unwritten Constitution, makes it practically impossible for the Sovereign to keep a minister in office when the House of Commons does not approve, and it makes it almost equally impossible to remove from office a Minister when the House of Commons does approve."

But, sir, we cannot do better than quote what has been quoted again and again, and I feel that my remarks on this occasion would be imperfect unless I quoted an authority which we have to-day admitted to be an authority, the authority of our respected Governor-General. What said the Earl of Dufferin, our Governor-General, at the time (in 1873) when he was at Halifax?—

"My only guiding star in the conduct and maintenance of my official relations with your public men is the Parliament of Canada. I believe in Parliament, no matter which way it votes, and to those men alone whom the deliberate will of the Confederate Parliament of Canada may assign to me as my responsible advisers can I give my confidence. Whether they are heads of this party or of that party must be a matter of indifference to the Governor-General; so long as they are maintained is he bound to give them his unreserved confidence, to defer to their advice and to loyally assist them with his counsels. As a reasonable being he cannot help having an opinion on the merits of different policies, but these considerations are abstract and speculative, and devoid of practical effect in his official relations. As the head of a constitutional State, as engaged in the administration of parliamentary government, he (the Governor-General) has no political friends; still less can he have political enemies. The possession or the being suspected of such possession would destroy his usefulness."

But, sir, we have more than that in our own history: we have got the practical instructions given by Her Majesty to Lord Elgin, at the time when Lord Elgin had before him the difficult question of the position of his Government in 1847. When he came out to this country, what did he find? He found the two Canadas almost at a deadlock; he found the Government of that day, of which I was a member—my first entry into politics—supported by a majority from Upper Canada, when all Lower Canada was banded against it; he found that that Government was formed on what I must say was the unwholesome principle of one race against the other. He was very anxious, for he was

not mixed up with questions connected with the formation of the Government, and all the questionable proceedings of Lord Sydenham with it in carrying the elections of 1841—

Hon. Mr. HOLTON—There was Lord Metcalfe later.

Sir JOHN—I am coming to Lord Metcalfe. Lord Elgin was not mixed up in any way with the *personnel* of the Government which Lord Metcalfe tried to keep up in Canada. He came out here for the purpose of carrying out the principles which they adopted in September, 1841, but which had never, in fact, been worked thoroughly, either by Lord Sydenham or by Lord Metcalfe, and he consulted his chief in the Colonial Department as to his position at that time. You will find what the present Lord Grey, an able Colonial Minister, did then, and some time before, and long afterwards. These were the instructions which Lord Grey then gave to Lord Elgin, and which Lord Elgin carried out:—

“The object with which I recommend to you this course is that of making it appear that any transfer which may take place of political power from the hands of one party in the Provinces to those of another, is the result not of any act of yours, but by the wishes of the people themselves, as shown by the difficulty experienced by the retiring party to carry on the government of the provinces according to the form of the Constitution. To this I attach great importance. I have therefore to instruct you to abstain from changing your Executive Council until it shall become perfectly clear that they are unable, with such fair support from yourself—(mind you, that even then, although Lord Elgin was of opinion that for the good of Canada a new Administration should be formed, in which the French element and the English element should equally, or nearly equally predominate, yet even then the instructions to Lord Elgin were)—“I have, therefore, to instruct you to abstain from changing your Executive Council until it shall become perfectly clear that they are unable, with such fair support from yourself as they have a right to expect, to carry on the government of the provinces satisfactorily, and to command the confidence of the Legislature.”

These authorities are, I think, sufficient to prove the case that in England the power of dismissal of a Government having the confidence of Parliament is gone forever, and that if it is gone there, it ought never to be introduced in a colony under the British Crown. But, sir, if you will look at the causes—if causes they can be called—why the Administration was changed at Quebec, you will find that all the objections are taken by the Chief of the Executive to the legislation of his Ministers, and not to the administrative acts of his Ministers, not to anything that they had done. It is true that he quotes an act of administration respecting the appointment of a councillor in Montmagny. That does not appear, however, in the case laid before Parliament, and we have no right, in one sense, to look at it or quote it at all, because the case of the Government and his advisers must be governed by the paper laid before the Legislature of Quebec before its prorogation; but for the purpose of illustration I will take the only act he complains of in administration, and this was that this

councillor was appointed by the Crown instead of being elected by the people. The circumstances were that there was a real or supposed irregularity in the appointment. The Attorney-General reported that the appointment was null and void, that the Crown by law had the power to fill up the vacancy. Filled it was, on the report of the Attorney-General, and the Lieutenant-Governor sanctioned it, but afterwards he thought that he was wrong, and he pressed that opinion. The Attorney-General still held to his opinion, but the First Minister yielded to the pressure brought upon them by the Lieutenant-Governor, and they took his opinion upon it, and the appointment was cancelled, and yet it was actually made a charge, apparently made a charge against the Administration, that they took a step on advice of the Attorney-General, but afterwards, on the head of the Executive remonstrating with them, in deference to his opinion they took his advice. With that single exception, it occurs to me, from my recollection of the paper, that all the objections made to the course and action of the DeBoucherville Government were that there was a difference of opinion as to the legislation which was carried in the Quebec Legislature. Now, sir, there is a distinct difference between acts of administration and acts of legislation, and that, I think, will be obvious from the nature of the case. The Sovereign is the chief of the Executive; the Crown, with its advisers, is appointed to carry on the administration of affairs, public or executive, and to administer matters. The Crown, it is true, nominally is a branch of the legislative power, but it has really ceased to be a branch of the legislative power. There is a mighty distinction, then, between the legislation and the administration of Ministers, and you can well see the reason of the difference. With the single exception of matters involving a charge upon the people, any member of this House, whether he is a member of the Ministry or not, can introduce a measure, any member of the Quebec Legislature could have introduced an Act stating that if these municipalities did not pay up, there would be no necessity of going to the Courts, and the Governor-in-Council should take summary proceedings to enforce their obligations; any member could have done it, and if the House chose to carry it, then the Ministry would be obliged to yield, and not only that, Mr. Speaker, but if that legislation, no matter how important it may be, is brought before Parliament, it is a contempt of the privileges of this House for any man even to quote or to suggest what the opinion of the Crown is respecting any political question. But it so happens that all the changes that have taken place in England, except two, have been on questions of administration, or questions of want of confidence in the capacity of the Government to administer affairs. Only two instances are known since the time of George III. until up to this moment, when there was

a dismissal or resignation of the Ministry in consequence of the difference between the Crown and the advisers of the Crown on matters of legislation, and these were on a similar question, that is, on the question of Catholic disability. The dismissal of Lord Melbourne was founded on the opinion of the King that he could not satisfactorily administer affairs, but no difference of opinion, that is, no question as to legislation, arose at all. The only two instances, as I said before, in which Ministers were dismissed on account of a difference of opinion between the King and his advisers, on matters of legislation, were in—no, there were three cases. In the first case there was the *Mora* bill; it was objected to by the King because it deprived him, as the chief of the Executive, of his patronage as chief of the Executive. When he objected to the Catholic emancipation bill in 1801. Then Mr. Pitt had promised, and he forced Pitt to resign because Pitt would adhere to the promise which he had made to the Irish people at the time of union in 1800. The next dismissal on account of legislation was when Lord Grenville was dismissed, in the manner which I have already mentioned, because he would not sign the pledge never afterwards to bring up a question of allowing Catholic gentlemen to hold high commands in the British Army. There were only three instances, and they were instances only to be mentioned, to be considered, to be cited, to be pointed at as outrages on the British Constitution. There was this difference, as it had been conveyed to poor old George III. by the Chancellor, the head of the English Church, the Archbishop of Canterbury: that he would be committing a breach of his Coronation Oath if he allowed such legislation. Lord Melbourne, then Mr. Dundas, declared that such an allegation was absurd. When he swore, as King, that he would preserve the rights of the Protestant Church as by law established, it meant that he would defend those rights as by law established, but if the law changed, then he must defend them as altered. The answer of the King, which was well known, was that he did not want any Scotch metaphysics; that he had taken the oath, and was bound by his conscientious scruples. We may regret that he had that conscientious scruple, because it has been the cause of much misery and misfortune to the United Kingdom of Great Britain and Ireland; it has been one of the principal causes why England and Ireland are not now one in heart and feeling, as Scotland and England have been ever since 1700. Still, we must have respect for the conscience of the King. But I point out to the House that, with the exception of the cases I have quoted, cases not to be repeated, but cases to be held up as warnings, that British Legislatures and people should never fall into committing the same mistake again. All the causes of dismissal and of forced resignation were on matters of administration. Some gentleman

has handed me this paper:—"What of Edmund Head's refusal of a dissolution the Brown-Dorion Government?" I am bound to defend Sir Edmund Head, but my answer is this:—Sir Edmund Head, at the time he sent for Mr. Brown, told Mr. Brown he was going to charge him with the formation of a Government, but Mr. Brown must understand that he must not suppose that if he did form a Government he would have the right of dissolution as a matter of course; that after the Government was formed he would have reasons given for it, and then he would judge for himself. The Sovereign of the day can send for any person he likes, and can charge that person with the formation of a Government, stating on what conditions he could form it.

Hon. Mr. MILLS—That is not consistent with *Bagshot*.

Sir JOHN—I say it is. The Sovereign cannot attach certain conditions to the power given to a member to form a new Ministry. The only power the Crown can exercise personally is that of attaching conditions to the power to form a Government. Sovereigns have again and again in English history given permission to form an Administration on certain terms. If the person did not choose to accept the terms, the Sovereign must form an Administration and get the confidence of Parliament. Sir Edmund Head in this case told Mr. Brown that he must not understand, if he accepted office, that he was to get a dissolution as a matter of course, and that such a dissolution would be granted only after sufficient reasons to convince him as to its necessity were given.

Hon. Mr. MACKENZIE—He was working in accord with Parliament.

Sir JOHN—You say he was working in accordance with the majority of Parliament. I was arguing that matters of legislation stood on quite a different basis from matters of administration. As a general rule the Crown did not interfere in matters of administration, but left these to Parliament, and the only instances in which the contrary has been the case are those I have quoted, which are precedents not to be followed, but which are held up by all constitutional writers as infringements on the true principles of the British Constitution. Not only was it held to be the case when Pitt took office, but a resolution was moved, in consequence of its having been reported through the country that the King was against the Portland and Fox coalition Government, and against the India bill, by Mr. Baker, on December 17th, 1783, which, after denouncing secret advice to the Crown against responsible Ministers, and the use of the King's name, set forth that "it is now necessary to declare that to report an opinion as a pretended opinion of His Majesty upon a bill or other proceeding, with a view to influence the vote of the members is a high crime and misdemeanor, dangerous to the honor of the Crown, a breach of

fundamental principles of Parliament, and subversive of the Constitution." The motion was carried by 133 to 80, notwithstanding the opposition of Pitt, who was ultimately successful in the struggle, although, according to our present views of constitutional principles and laws, he was altogether wrong in the course he pursued on that occasion. Why, it is impossible that the same principle can apply to acts of administration and acts of legislation. I tried it the other day in this House. The hon. Minister of Justice introduced a bill respecting penitentiaries, and I rose and asked him if the Governor-General had assented to the measure. He said no. He looked at the Premier, and the Premier looked at him and said to me, "I don't think it is necessary." I said, "Neither do I, but the Lieutenant-Governor of the Province of Quebec thought it was necessary that he should be consulted about all measures."

Hon. Mr. MACKENZIE—The right hon. gentleman is not now quoting me quite correctly.

Sir JOHN—I think so.

Hon. Mr. MACKENZIE—I thought the right hon. gentleman referred to some financial part of the scheme when I said it was not necessary. I referred wholly to the usual sanction for bills.

Sir JOHN—He thought of no financial cause in it requiring the previous assent of the Crown.

Hon. Mr. MACKENZIE—Every bill the Ministry introduced has the assent of the Crown.

Sir JOHN—I have been a member of five administrations; I have sat under five Governor-Generals—Lord Elgin, Sir Edmund Head, Lord Monck, Lord Lisgar and Lord Dufferin, and I never heard that doctrine proclaimed before. We know perfectly well that the Governor-General, as the Queen can if she chooses, can send for the Ministers and say, "I do not like that bill, and I would like to discuss it with you; I think you must modify it or hold it over." The Sovereign can thus interfere if he chooses, but practically he leaves all legislation to the country. The proof of that is found in the fact that any member of the Opposition, in all matters excepting those connected with finance, which must be preceded by a message from the Crown, were just as competent to introduce every Ministerial measure as hon. gentlemen on the Treasury benches, and as competent to amend any measures. The House saw the other day a bill introduced by the hon. Postmaster-General, to which the hon. member for South Bruce moved an amendment which entirely destroyed and changed the whole aim and end of the bill. The hon. gentlemen accepted it. He did not propose that it should be deferred until he went to Rideau Hall to consult the Governor-General. So it is with all other Government bills. I venture to say that with the exception of the general statement which, of course, is made by the hon. the First Minis-

ter at the beginning of the session, as to what is contained in the Speech from the Throne, all departmental bills were introduced without the sanction in any shape of His Excellency. Hon. gentlemen opposite will not deny that statement. Yet the whole cause of objection to the course taken by the Quebec Administration was because the Lieut.-Governor did not agree with the policy of the legislation, although that policy was passed and approved by the representatives of the people by a large majority. The Lieut.-Governor allowed his Ministry to introduce their bills; he saw day after day the discussions in the House; every day received the Votes and Proceedings, and in fact laid in wait for his Ministers. He allowed them to bring down the supply bill, and almost allowed them to carry the Appropriation Act; he allowed them to carry through their bill respecting railways, and that respecting the doubling up of the subsidies, and strange to say, the same bill for doubling up the subsidies, which was one of the first causes given why they were dismissed, received the royal assent of the Lieutenant-Governor on the advice of the successors of the late Government. That bill in no way increased the burthens of the people, the subsidy having been voted years before Mr. Letellier was Lieutenant-Governor, and there being a provision that if a portion of the subsidy was not taken advantage of, it could be applied to the benefit of other railways. That was the law before Mr. Letellier was Lieutenant-Governor. The act was merely carrying the law into force. The Lieutenant-Governor gave as one of his first reasons for dismissing his Ministers that they had passed the law without consulting him; yet it was by the advice of Mr. Joly that it was now the law. As an hon. member near me says, Mr. Joly was President of one of the roads, and voted for the measure regarding which he advised the Lieutenant-Governor to dismiss Mr. DeBoucherville. Actually he was voted to support the measure, and was in one sense interested in it, and was now responsible for the measure becoming law, was a party to the dismissal of Mr. DeBoucherville, because he had introduced the bill and carried it through the Legislature. He approves of the Act, but procures the dismissal of the man who obtained its adoption. The Stamp Act which was introduced last session was a very important one. Before the hon. Minister of Inland Revenue got his amendment bill through the committee, he must not have known his own progeny. It was like the gun which had a new lock, stock and barrel. Was the assent of the Governor-General obtained to the bill or to any amendments made on it? And yet, forsooth, the Lieutenant-Governor of Quebec was to decide and govern what the legislative policy of the people is to be! He, like Jupiter, shakes his ambrosial locks, gives his nod, and the legislators have merely

to register his decrees. No such thing could happen in England. The Queen knows too well what her duty is; she keeps a sharp and watchful eye upon the foreign policy. No one can read the *Memoirs of the Prince Consort* without feeling what a great woman—great stateswoman, if there is such a word—she is, and with how watchful and patriotic a care she guarded and studied and considered the administration of the nation. But, as regards the legislation of the nation, she left that as it ought to be left, to the people, through their representatives. She was satisfied with the old sliding scale of the corn duties in the old corn law times; she was satisfied with the fixed duty of 4s a quarter declared by Lord John Russell, and with the free trade in corn declared by Sir Robert Peel; she was satisfied with the sustaining of the Established Church in Ireland, so long as her Ministers advised her so to maintain it; she was satisfied with the disestablishment of her own Church, of which she was the head, as soon as the representatives of the people in Parliament decreed it; she received with like equanimity a reform bill from one Government or a retroactive measure from another. She knows it has ceased to be a portion of the attributes of the Crown to possess any power in legislation, and the strongest proof of that is that the power of veto is gone, and that while the Sovereign is still the head of the Executive, she is only nominally the head of the Legislature; she cannot veto a bill. It has not been done since Queen Anne. It is as effete as the Dodo. It is no part of the constitution of England; this is laid down by all the writers. I shall quote again from Mr. Bagehot, page 143:—

"To state the matter shortly, the Sovereign has, under a constitutional monarchy such as ours, three rights: the right to be consulted, the right to encourage, the right to warn, and a King of great sense and sagacity would no others. He would find that his having no others would enable him to use these with singular effect. He would say to his Ministers:—The responsibility of these measures is upon you; whatever you think best shall have my full and effectual support, but you will observe that, for this reason and that reason, what you propose to do is bad; for this reason and that reason, what you do not propose is better. I do not oppose, it is my duty not to oppose, but observe that I warn."

And that is the duty of a Sovereign. If any legislation carried on by a Ministry having a majority in Parliament—and, of course, they cannot carry it on without that—was opposed to the view of the Sovereign, he had the right to send to his First Minister and say, "I will continue to support you, but I have had experience for years, and I warn you;" and that is substantially the only power he has in matters of legislation. On page 125 Mr. Bagehot says:—

"The popular theory of the English Constitution involves two errors as to the Sovereign, first, in its oldest form, at least, it considers him as an estate of the realm, a separate, co-ordinate authority with the House of Lords and the House of Commons. This and much else the Sovereign once was, but this he is no longer. That authority could only be exercised by a monarch with a legislative veto. He should be able to reject bills, if not as the House of Commons rejects them at least as the House of Peers rejects them. But the Queen has no such veto; she must sign her own death warrant if the two Houses unanimously send it up to her. It is a fiction of the past to ascribe to her legislative power; she has long ceased to have any."

Nor can the House of Lords interfere effectually if the House of Commons declares in favor of the policy of the Government of the day. May says:—

"The responsibility of Ministers has been still further simplified by the dominant power of the Commons. The Lords may sometimes thwart the Ministry, but they are powerless to overthrow a Ministry supported by the Commons, or to uphold a Ministry the Commons have condemned. Instead of many masters, the Government has only one, that is the people, nor can it be said that master has been severe, exacting or capricious."

Every Ministry is liable to make mistakes in appointments; every Ministry is liable somewhat from the mistakes or errors, or the worse than errors, of their subordinates; though they may not be responsible for them, still they may be, to a certain degree, responsible in public opinion for having made a wrong choice, but until they condone the offence, until they approve of the offence, until they say that we approve of the offence, until they say that we approve of that policy and will support them in that policy, they are not justly amenable to attack. God forbid that I should do, for as yet I know not that the present Ministry, at the head of which is the hon. member for Lambton, is liable to the charge, liable to attack or liable to censure for anything that has taken place. As yet I do not know this, and therefore I will not say it. But it depends upon hon. gentlemen—whether it be the head of a Liberal Government upon whom the mantle of Robert Baldwin and others has fallen, or be the distinguished leader of the Liberal party of the country, but I do not believe that that hon. gentleman will sacrifice those great principles for the sake—it may be a warm-hearted, it may be, a kindly, and perhaps, in some respects, a politic act to do, looking at the mere temporary advantage of an election, but I do not believe that that hon. gentleman will turn his back upon those principles which he has so long professed, and which have been the chief credit, the chief honor of his party. Mr. Speaker, I move that resolution. (Immense cheering.)

